

RESOLUTION NO. 10-383

**A RESOLUTION APPROVING A GRANT TO LAMAR
STATE COLLEGE - PORT ARTHUR FOR THE
CONSTRUCTION OF A NEW BUILDING KNOWN AS
THE STUDENT SUCCESS CENTER UNDER THE
OPERATION DOWNTOWN SITE IMPROVEMENT
GRANT PROGRAM**

WHEREAS, on May 9, 2009, a ballot proposition was presented to and approved by the qualified voters in the City of Port Arthur, Texas (the "City") for the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") to utilize Section 4A sales and use tax funds for "the cost of demolition of dilapidated structures and infrastructure limited to streets and roads, rail spurs, water and sewer utilities, electric and gas utilities, drainage, site improvements and related improvements necessary to promote or develop new or expanded business enterprises within a project area from 7th Street to the Intracoastal Canal and from Martin Luther King, Jr. Drive to Lake Charles Avenue within the City"; said authority limited to the PAEDC's expenditure of not more than \$750,000 per year for said projects (the "Ballot Proposition"); and

WHEREAS, the PAEDC has developed an application for a Site Improvement Grant Program under OPERATION DOWNTOWN; and

WHEREAS, Lamar State College-Port Arthur has submitted an Application for the construction of a new building know as the Student Success Center in accordance with its Application (the "Application") and made a part hereof for all purposes; and

WHEREAS, on August 9, 2010, the Board of Directors of the PAEDC considered and approved funding of an OPERATION DOWNTOWN grant to Lamar State College-Port

WHEREAS, funds are available during fiscal year 2009-2010 from the funds allocated in the Ballot Proposition for improvements outlined in the Application; and

WHEREAS, PAEDC has adopted an OPERATION DOWNTOWN Site Improvement Grant Agreement attached hereto as **Exhibit "A"** (the "Grant Agreement") with related exhibits which outline the responsibilities and financial commitment of Lamar State College-Port Arthur to construct the Student Success Center and to install the infrastructure improvements as outlined in its Application to be funded in part by the Grant.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. That the facts and opinions in the preamble are true and correct.

Section 2. That the City Council hereby authorized the allocation of \$250,000 of funds from the Ballot Proposition for fiscal year 2009-2010 to fund the construction of a new building know as the Student Success Center under the Application submitted by Lamar State College-Port Arthur.


Section 3. That a copy of this Resolution shall be spread upon the Minutes of the City Council.

READ, ADOPTED AND APPROVED on this 7th day of Sept. A.D., 2010, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor Prince; Mayor Pro Tem Albright,
Councilmembers Segler, Flood, Beard, Wise
and Henderson.
_____;

NOES: None


Deloris "Bobbie" Prince, Mayor

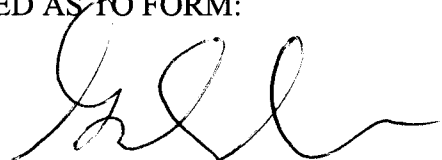
ATTEST:


Terri Hanks, City Secretary Acting

APPROVED:


Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:


Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:


Valecia R. Tizeno, City Attorney

APPROVED AS TO FORM:

Val Ligeno
CITY ATTORNEY

EXHIBIT “A”

**OPERATION DOWNTOWN
SITE IMPROVEMENT GRANT AGREEMENT
BETWEEN
CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION
AND
LAMAR STATE COLLEGE-PORT ARTHUR**

This Operation Downtown Site Improvement Grant Agreement (the "Agreement") is executed to be effective as of the ____ day of _____, 2010 (the "Effective Date") by and between the City of Port Arthur Section 4A Economic Development Corporation (the "Grantor"), a body politic and corporate and a public instrumentality of the State of Texas ("State") and Lamar State College-Port Arthur, an institute of the Texas State University System, itself a public agency and instrumentality of the State of Texas, acting by and through its undersigned duly authorized representatives (the "Grantee").

Recitals

A. Grantor through a ballot proposition and an election held May 9, 2009 (the "Election"), has allocated funds in certain fiscal years of the PAEDC for **"specific infrastructural improvements necessary to promote or develop new or expanded business enterprises"** in a designated area in downtown Port Arthur, Texas

B. Grantor through the authorization received from the Election has established **Operation Downtown**, a downtown improvement program of the PAEDC for site improvements and related improvements necessary to promote or develop new or expanded business enterprises together with **Guidelines** identifying eligible projects and a procedure for applications for funds.

C. Grantee has submitted an application for a site improvement grant to Grantor providing for a project more fully identified in the application which Grantor has approved and is attached hereto and is incorporated herein for all purposes as **Exhibit "A"** (the "Application").

D. Grantor has received and approved the Application of Grantee and authorized a grant to Grantee in the total amount of Two Hundred Fifty Thousand and 00/100 (\$250,000.00) Dollars (the "Grant") which Grantor will distribute to Grantee pursuant to this Agreement.

E. The Grant will be used by the Grantee solely to finance the costs of eligible infrastructure improvements (the "Project").

NOW, THEREFORE, in consideration of the foregoing Recitals which are incorporated in this Agreement as if fully set forth below and in consideration of the covenants, agreements, obligations and undertakings hereinafter stated, Grantor and Grantee agree as follows:

ARTICLE I

DEFINITIONS

All accounting terms not specifically defined herein shall have the meanings determined by generally accepted accounting principles, consistently applied. All terms previously defined are incorporated in this Agreement by reference. Capitalized terms not previously defined hereinabove and used in this Agreement have the meanings defined below:

“Building Permit” means a permit issued by the City stating that the infrastructure improvements set forth in the Application conforms to the plans and specifications and the standards contained in or referred to in Chapter 18, Code of Ordinances of the City of Port Arthur, Texas (the “City”).

“Certificate of Occupancy” means as defined in Chapter 18, Code of Ordinances, Section 23-600 through 23-800 of the Code of Ordinances of the City.

“Completion Date” means 308 months after the Commencement Date under the Project Construction Contract (hereinafter defined) unless Grantor and Grantee mutually agree to a different date in writing, in accordance with this Agreement.

“Default” means any default under Article VI of this Agreement.

“Eligible Project Costs” means those costs incurred for the Project in accordance with the Project Budget approved by the Grantor and included in the Application.

“Expenses” means all costs and expenses incurred by the Grantor (whether before or after a Default) in connection with, or in exercising or enforcing any rights, powers and remedies provided in, any of the Grant Documents.

“Grant Documents” means all documents executed and delivered in connection with or as a precondition of the Grant and the Obligations, including this Agreement, **Exhibit “A”** to this Agreement, any amendments to this Agreement executed in accordance with this Agreement, the Operation Downtown Site Improvement Grant Program Guidelines, the Operation Downtown Site Improvement Grant Program Application (as completed by Grantee), any documents that Grantee is required to provide to Grantor in accordance with this Agreement and any other document, evidencing or satisfying a precondition of the Grant, as any of them may be amended.

“Guidelines” means the Operation Downtown improvement program regulations attached hereto as **Exhibit “B”**.

“Improvements” means all enhancements to the Property, including but not limited to, any real property improvements, infrastructure improvements and assets to be located at the Property in accordance with the Application.

“Laws” mean any current or future federal, state and local laws, statutes, rules, ordinances, regulations, codes, decisions, interpretations, orders, or decrees of any court or other governmental authority having jurisdiction that are pertinent to the performance of the Project or that affect either party’s responsibilities or rights under this Agreement.

“Obligations” means all duties of payment, performance, or completion owed by the Grantee to the Grantor as specified under the Grant Documents and by law, including but not limited to the obligation to strictly observe and perform all of the provisions of the Grant Documents, time being of the essence.

“Primary Contract” means the contract between Grantor and its contractors and subcontractors calling for the installation of the Improvements for the Project.

“Project” means the eligible improvements described in the Application and as further set forth in the Project Construction Contract attached hereto as **Exhibit “C”** and made a part hereof for all purposes. The Project Construction Contract shall describe the Drawings and Specifications of the eligible Project Improvements.

“Property” means the property owned by Grantor more fully described in **Exhibit “D”** attached hereto by reference and incorporated herein for all purposes.

“Project Budget” means the expected costs to construct the Project as included in the Application and the Drawings and Specifications incorporated within the Project Construction Contract and approved by the Grantor.

“Project Construction Schedule” means the preliminary schedule of work outlined by the contractor for Grantee dated July 8, 2010, as more fully described in **Exhibit “E”** and made a part hereof for all purposes.

ARTICLE II

TERMS OF THE GRANT AND DISBURSEMENT

Section 2.01. The Grant.

Subject to the further terms and conditions hereof and of any other Grant Documents, and to the availability of funds for this purpose as determined by Grantor in its sole discretion, the Grantor agrees to extend the Grant to the Grantee.

Section 2.02. Disbursements.

(a) **In General.** Subject to the continued compliance by the Grantee with all of the terms of all of the Grant Documents, the continued satisfaction of all conditions precedent to disbursing Grant proceeds under this Agreement, the satisfactory review of any reports due pursuant to Section 3.02(j), and the continued non-existence of a Default or any event, circumstance, act or omission which with the giving of notice, the passage of time, or both, would constitute a Default, the Grantor shall tender to the Grantee: (i) a sum not to exceed

\$ _____ as soon as is practicable following the execution of this Agreement (the "Initial Payment") and (ii) thereafter all sums shall be paid on a reimbursement basis only. Reimbursements shall be made monthly as work on the Project accrues and as Improvements eligible for funding under the Grant are constructed and evidence of completion is set forth in monthly pay requests executed by Grantor, its architect or engineer and its contractor. Reimbursements will be processed at the rate of 90% of funds requested for Improvements eligible for reimbursement with a 10% retained until completion of the work and the receipt by Grantee gets a Building Permit and Certificate of Occupancy.

(b) Disbursements to the Grantee. All disbursements shall be made directly to the Grantee by check or wire transfer payable and sent to the Grantee.

(c) Conditions for All Disbursements. The obligation of the Grantor to make any disbursement of the Grant is subject to the satisfaction of the following conditions as of the date the disbursement is made:

- (i) No representation or warranty of the Grantee contained in this Agreement shall be or have become materially incorrect or inaccurate.
- ii) There shall be no breach, default or event of default (including a Default) under the terms of any of the Grant Documents, and no event, circumstance, act or omission shall exist which with the giving of notice, the passage of time, or both, would constitute breach, default, or event of default (including a Default) under any of the Grant Documents.

(d) Availability of Funds. Disbursements of Grant proceeds are subject to the continuing availability of funds for such purpose, and compliance with all applicable Laws.

(e) Upon each disbursement, the Grantee shall be deemed to have issued each of the representations and warranties contained in this Agreement.

(f) In no event shall the Grantor be obligated to make any disbursement under this Agreement if a Default has occurred, if the disbursement would cause the amount disbursed in that year to exceed the annual limit set forth in subsection (a) above, or if the disbursement would cause the total amount disbursed to exceed the amount of the Grant.

Section 2.03. Conditions Precedent to Initial Disbursement.

(a) Before disbursing any Grant proceeds, Grantee has certified to Grantor and its legal counsel as specified in **Exhibit "F"** that Grantee has obtained funding for the Project which funds shall be certified as the Project Budget and certified by Grantee as sufficient to satisfy its obligations to Grantor under the Guidelines and sufficient to complete all costs necessary for the Project to receive a Building Permit and Certificate of Occupancy.

(b) Before disbursing any Grant proceeds, Grantee shall receive from Grantor a copy of the Primary Contract duly executed by Grantee and its contractor or subcontractors together

with receipt of all supporting documentation evidencing the agreement for the acquisition, construction and installation of the Improvements on the Property.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 3.01. Representations and Warranties of the Grantee.

Grantee represents and warrants as follows:

(a) Organization. Grantee is a constituent institution or an institution of the Texas State University System which is a public agency and instrumentality of the State of Texas.

(b) Due Authorization. Grantee has the full power and authority to enter into this Agreement and consummate the transaction contemplated by the Grant Documents, to accept the Grant as contemplated hereby, to execute and deliver all of the Grant Documents to which it is a party and to comply with the terms set forth in all of the Grant Documents, all of which have been duly authorized by any and all necessary action of the Grantee. No approval of any other person or public authority or regulatory body is required as a condition to the validity of any of the Grant Documents, or, if required, the approval has been obtained.

(e) Validity of Grant Documents. All of the Grant Documents have been properly executed and will:

- (i) Not violate any Laws;
- ii) Not violate any provision, or result in a breach, of any document or agreement binding on the Grantee or affecting its property; and
- (iii) Constitute the valid and legally binding obligations of the Grantee, fully enforceable against the Grantee, in accordance with their terms.

(d) Legal Actions. There is no: (1) claim pending or, to the best of the Grantee's knowledge threatened, in any court or before any governmental agency; or (2) investigation by or before any governmental authority, that:

- (i) Questions the validity or enforceability of any of the Grant Documents, or any action taken, or to be taken, under any of them;
- (ii) Is likely to result in any material adverse change in the authority, properties, assets, liabilities, or conditions (financial or otherwise) of the Grantee that would materially impair the Grantee's ability to perform any of its obligations under all of the Grant Documents; or
- (iii) Affects the Project.

(e) Grant Document Defaults. There is no event of default (including a Default) on the part of the Grantee under any of the Grant Documents, and no event has occurred or is continuing that, with notice, or the passage of time, or both, would constitute an event of default (including a Default) under any of the Grant Documents.

(f) Compliance With Laws. Upon Grantee's knowledge, information and belief, the Grantee has complied with all Laws.

(g) Approvals. Grantee has obtained, or expects to obtain prior to the commencement of the Project, all approvals from and reviews by all Governmental Authorities required by all Laws applicable to the Project.

(h) Project Budget. The Project Budget sets forth all of the expected costs of, and sources of funds for, the Project, and has been approved by the Grantor.

(i) Resolution. A resolution has been duly adopted as an official act of the Grantee's governing body, authorizing the execution and delivery of all of the Grant Documents by the Grantee and authorizing and directing the person executing the Grant Documents to do so on behalf of the Grantee.

(j) Taxes. All taxes imposed upon the Grantee and its properties have been paid prior to the date when any interest or penalty would accrue for nonpayment, except for those taxes being contested in good faith and by appropriate proceedings.

Section 3.02. Covenants of the Grantee.

The Grantee shall:

(a) Performance. Promptly perform all of its obligations in the manner provided in the Grant Documents.

(b) Use of Grant Proceeds. Use the Grant for Eligible Project Costs, as set forth in the Project Budget, and in further compliance with the following: (i) an adjustment in the use of the Grant within an existing category set forth in the Project Budget shall not require an amendment to this Agreement if the adjustment is consistent with the purpose of the Grant as set forth in the Application; (ii) an adjustment in the use of the Grant between existing categories set forth in the "Budget Overview" section of the Project Budget in an amount not to exceed ten percent (10%) of the category from which the Grant proceeds are to be deducted shall not require an amendment to this Agreement if the adjustment is consistent with the purpose of the Grant as set forth in the Application; and (iii) no other adjustments to the Project Budget shall be permitted without the advance written authorization of the Grantor, as evidenced by an amendment to this Agreement.

(c) Completion. Use its best scientific efforts to cause the Project to be completed by the Completion Date.

(d) Existence. Maintain its existence as a constituent institution or an institution of the Texas State University System.

(e) Compliance with Laws. Comply with all Laws applicable to the Project.

(f) Fair Practices. Certify that it complies with all laws prohibiting discrimination in employment or otherwise on the basis of political or religious opinion or affiliation, marital status, sexual orientation, genetic information, race, color, creed or national origin, sex, age, or the physical or mental disability of a qualified individual with a disability; and will submit to the Grantor, upon request, information relating to Grantee's operations with regard to political or religious opinion or affiliation, marital status, sexual orientation, genetic information, physical or mental disability, race, color, creed, national origin, sex or age, on a form to be prescribed by the Grantor.

(h) Records. Keep, in accordance with generally accepted accounting principles, any books, records, and other documents as may be reasonably necessary to fully account for the amount and disposition of the Grant, the costs incurred to perform the Project, and the source of all funds expended towards the costs of the Project ("Project Records"). All Project Records shall be maintained at the offices of the Grantee, and Grantee shall make Project Records available to Grantor or its duly authorized representative for inspection, copying, audit and examination during normal business hours. All Project Records shall be maintained until three years after discharge of all duties owed to Grantor or longer if required by Grantee's document retention policies.

(i) Indemnification. Grantee agrees to and shall indemnify and hold harmless and defend Grantor, its officers, agents, and employees from and against any and all claims, Losses, damages, causes of action, suits, and liability of every kind, including all reasonable expenses of litigation, court costs, and reasonable attorney's fees, for injury to or death of any person, for damage to any property, or its failure to abide by all applicable environmental laws, rules and regulations arising out of or in connection with Grantee's operation and construction of improvements contemplated by this Agreement on Grantee's site.

(j) Project and Financial Reports. During the construction of the Project and following its substantial completion:

- (i) Grantee shall submit to the Grantor any and all information or reports requested to verify that the Grantee has met all obligations as specified herein. Grantee shall submit to the Grantor a notarized affidavit stating that all bills for labor, materials, and incidentals incurred have been paid in full, that any claims from manufacturers, materialmen and subcontractors have been released, and that there are no claims pending of which the Grantee has been notified. The submission of these reports and information shall be the responsibility of Grantee and shall be signed by the duly authorized representative of Grantee.

- (ii) Grantee shall submit the information and/or reports required herein on or before the day that is ten days after the earlier of (i) the date of issuance of the Certificate of Occupancy and the Grantee opens for business; or (ii) the date on which they are requested by the Grantor. If Grantee fails, within thirty (30) days after receipt of written notice from the Grantor, to submit the information and/or reports, then Grantor's obligations.
- (iii) All submittals in this Agreement shall be to the Grantor.
- (k) Taxes and Claims. Pay all applicable taxes, assessments and claims as they become due, except for those being contested in good faith by appropriate proceedings.

ARTICLE IV **RELEASE OF CLAIMS**

Grantee releases, relinquishes and discharges the Grantor, its officers, agents and employees from all claims, demands and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of, any person (whether they be either of the parties hereto, their employees or other third parties) and any loss of or damage to property (whether property of either of the parties hereto, their employees, or of third parties) or their respective failure to abide by all applicable environmental laws, rules and regulations that is caused by or alleged to be caused by, arising out of, or in connection with Grantee's operation of or construction of improvements contemplated by this Agreement on Grantee's site.

By entering into this Agreement, Grantor does not consent to suit, waive its governmental immunity or the limitations as to damages contained in the Texas Tort Claims Act.

ARTICLE V **CERTIFICATIONS**

By signing below, Grantee makes the following certifications:

- (a) All information provided in connection with Grantee's Application is true and correct to the best of Grantee's knowledge.
- (b) Any misrepresentation or false statement made by Grantee, or an authorized agent of Grantee, in connection with Grantee's Application, whether intentional or not, will constitute grounds for denial of the Application and/or revocation of the Grant.
- (c) Grantee does not and will not knowingly employ an undocumented worker who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States. Grantee understands that if, after receiving a grant, Grantee is convicted of a violation under 8 U.S.C. §1324a(f), Grantee shall repay the amount of the Grant with interest, at the rate and according to the other terms provided by an agreement under §2264.053 of the Texas Government Code, not

later than the 120th day after the date of the public agency, state or local taxing jurisdiction, or economic development corporation notifies Grantee of the violation.

ARTICLE VI

DEFAULT AND REMEDIES

Section 6.01. Defaults.

The following events shall constitute a Default under this Agreement:

- (a) Any Grant proceeds are used for any purpose other than Eligible Project Costs.
- (b) The Grantee breaches any covenant, representation, warranty or other provision of this Agreement, which breach is not cured within 30 calendar days from the date of receipt of written notice (as provided below) of the breach from the Grantor.
- (c) The Grantee breaches any covenant, representation, warranty, or other provision in any other Grant Document, which breach continues beyond any applicable grace or cure period.
- (d) Any statement made in any certificate, report or opinion (including legal opinions), financial statement, or other document furnished in connection with the Grant was incorrect in any material respect when made.
- (e) The Grantee fails to comply with any requirement imposed by any Governmental Authority in connection with the Project within 30 days after written notice of the requirement is made or within any other time period set by the Governmental Authority; or if any proceeding is commenced or action taken to enforce any remedy for a violation of any requirement of a Governmental Authority in connection with the Project.
- (f) The Project is not completed by the Completion Date as required by this Agreement.
- (g) A permanent or preliminary injunction, excluding an ex parte injunction, is issued by a court of competent jurisdiction that lasts for more than 90 days and prohibits the Grantee from carrying out any of its Obligations as set forth herein.
- (h) Without the prior written consent of the Grantor, the Grantee is dissolved by operation of law or in any other manner.
- (i) Any court of competent jurisdiction makes a final order: (i) adjudicating the Grantee a bankrupt, (ii) appointing a trustee or receiver of a substantial part of the property of the Grantee, (iii) approving a petition for, or affecting an arrangement in, bankruptcy, a reorganization pursuant to federal bankruptcy law, or any other judicial modification or alterations of the rights of the Grantor or of creditors of the Grantee, (iv) assuming custody or sequestering any substantial party of the property of the Grantee; or (v) attaching or garnishing

any substantial part of the property of the Grantee; or if the Grantee (a) files such petition; (b) takes or consents to any other actions seeking any such judicial order; (c) makes an assignment for the benefit of creditors; (d) fails to pay debts generally as they become due; or (e) makes an admission in writing of inability to pay debts generally as they become due.

Section 6.02. Remedies.

- (a) Upon the occurrence of any Default, the Grantor may:
- (i) Require the immediate repayment of the entire outstanding amount of the Grant and immediate payment of any Obligations;
 - (ii) At any time proceed to protect and enforce all rights and remedies available to the Grantor under this Agreement or by Law, by any other proceedings, whether for specific performance of any agreement contained in this Agreement, damages, or other relief;
 - (iii) Suspend or terminate the Grantee's authority to receive any undisbursed Grant proceeds at any time by written notice to the Grantee; and
 - (iv) Exercise any of its rights and remedies under any of the Grant Documents.

(b) All remedies provided for in this Agreement or by Law are cumulative and are in addition to any other rights and remedies available to the Grantor under any Law. The exercise of any right or remedy by the Grantor shall not constitute a cure or waiver of any Default, nor invalidate any act done pursuant to any notice of Default, nor prejudice the Grantor in the exercise of those rights.

(c) The failure of the Grantor to insist upon performance of any term of this Agreement shall not constitute a waiver of any term of this Agreement. No act of the Grantor shall be construed as an election to proceed under any one provision in this Agreement to the exclusion of any other provision.

(d) If the Grantor suspends or terminates this Agreement, the rights and remedies available to the Grantor shall survive the suspension or termination.

(e) In no event shall Grantee's total liability to Grantor be greater than the actual amount of funds disbursed by Grantor to Grantee for the Project under this Agreement.

ARTICLE VII **MISCELLANEOUS**

Section 7.01. Notices.

(a) All communications between Grantor and Grantee made pursuant to this Agreement shall be in writing.

(b) All communications shall: (1) when mailed, be effective three business days after deposit in the mails; (2) when sent for next day delivery by a reputable overnight courier service, be effective one business day after dispatch; and (3) when sent by fax, be effective when faxed and receipt of the communication is confirmed by a fax receipt. Communications shall be delivered to the office of the addressee, as follows:

(i) Communications to the Grantor shall be sent to:

City of Port Arthur Section 4A Economic Development Corporation
P.O. Box 3934
Port Arthur, Texas 77642
Attn: Mr. Floyd Batiste
(409) 963-0579
fbatiste@paede.org

With a copy to Counsel for the Grantor:

Guy N. Goodson
Germer Gertz, L.L.P.
550 Fannin, Suite 400
Beaumont, Texas 77701
(409) 654-6730
ggoodson@germer.com

(ii) Communication to the Grantee shall be mailed to:

Lamar State College-Port Arthur
P.O. Box 310
Port Arthur, Texas 77641
Attn: Sam Monroe
(409) 984-6100
Sam.Monroe@lamarpa.edu

With a copy to Counsel for Grantee:

(c) The parties may change their notice addresses by sending written notice to the other parties.

Section 7.02. Assignment/Delegation.

No benefit inuring to the Grantee under this Agreement may be assigned, and no duty imposed on the Grantee may be delegated, without the prior written consent of the Grantor.

Section 7.03. Successors Bound.

This Agreement shall inure to the benefit of, and shall be binding upon, each of the parties and their successors and permitted assigns.

Section 7.04. Severability.

The invalidity of any part of this Agreement shall not affect the validity of the remaining provisions of this Agreement.

Section 7.05. Entire Agreement.

This Agreement, including any exhibits attached hereto and any subsequent amendments the parties may execute in accordance with Section 7.06 below, constitutes the entire agreement between the parties and supersedes all prior oral and written agreements, representations, and negotiations between the parties concerning the Grant and the Obligations.

Section 7.06. Amendment of Agreement.

This Agreement may be amended only in writing executed by the parties.

Section 7.07. Headings.

The headings used in this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 7.08. Disclaimer of Relationships.

The Grantee acknowledges that the obligation of the Grantor is limited to making the Grant on the terms set forth in this Agreement. Nothing in this Agreement, and no act of the parties or any one or more of them, shall be deemed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any other relationship between the Grantor and the Grantee.

Section 7.09. Governing Law.

This Agreement and any other Grant Documents shall be governed by the laws of the State of Texas, and jurisdiction of any claim hereunder shall be in the Court of appropriate jurisdiction in Jefferson County, Texas.

Section 7.10. Term of Agreement.

Except as otherwise provided in this Agreement, unless sooner terminated by the written consent of the parties this Agreement shall remain in full force and effect from the Effective Date until all Grantee's obligations under the Agreement have been satisfied.

Section 7.11. Illegality.

If performance of any Obligation would require the performing party to violate the Law, then the performance shall be reduced to the level permitted by Law, and if any provision of this Agreement is determined to be illegal or invalid by a court of competent jurisdiction, then such provision only shall be void as though not set forth in this Agreement, and the remainder of this Agreement shall remain in full force and effect.

Section 7.12. Force Majeure.

Neither party is liable for failure or delay in performing any of its obligations under this Agreement if the failure or delay is required in order to comply with any governmental regulation, request or order, or necessitated by other circumstances beyond the reasonable control of the party so failing or delaying, including but not limited to Acts of God, war (declared or undeclared), insurrection, fire, flood, accident, labor strikes, work stoppage or slowdown (whether or not such labor event is within the reasonable control of the parties), or inability to obtain raw materials, supplies, power or equipment necessary to enable a party to perform its obligations. Each party will: (a) promptly notify the other party in writing of an event of force majeure, the expected duration of the event and its anticipated effect on the ability of the party to perform its obligations; and (b) make reasonable efforts to remedy the event of force majeure.

Section 7.13. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which, when taken together, shall constitute one document.

IN WITNESS WHEREOF, the Grantor and the Grantee have caused this Agreement to be executed and delivered as of the date first above written.

[The remainder of this page is intentionally left blank.]

AGREEMENT EXECUTION

**CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION**

SIGNED AND AGREED TO on the _____ day of _____, 2010.

By: _____
President

By: _____
Secretary

Witness

Witness

LAMAR STATE COLLEGE-PORT ARTHUR

SIGNED AND AGREED TO on the _____ day of _____, 2010.

By: _____

Witness

EXHIBIT "A"



RECEIVED JUL 12 2010

Lamar State College — Port Arthur
A Member of The Texas State University System

June 30, 2010

Mr. Floyd Batista
Chief Executive Officer
Port Arthur Economic Development Corporation
P.O. Box 3934
Port Arthur, Texas 77642

Dear Floyd:

Enclosed please find an 'Operation Downtown Site Improvement Grant Program' application submitted by Lamar State College-Port Arthur. The college has received authorization to construct a new building containing 7,500 sq.ft. in the 1400 block of Procter. The building, to be known as the Student Success Center, will contain classrooms and faculty offices and will be constructed on campus owned land. This request is for a grant of \$250,000 to be in addition to the budget of \$2,191,279 which more than meets your 3 for 1 test of funding. The additional funds, if approved, would be utilized to bury/re-route utilities, install new street lighting and landscape the street on Procter between Lake Charles and Augusta Avenue. Our schedule calls for bidding the project in July of this year with work to begin shortly thereafter. The anticipated time of completion is May 2011.

If you need more information, please let me know. Meanwhile, please know how much we appreciate your efforts aimed at improving this part of town.

Sincerely,

Sam Monroe
President

/ds
Enclosures

Office of the President
P.O. Box 310 • Port Arthur, Texas 77641-0310
Phone 409-984-6100 • 800-477-5872 • Fax 409-984-6032
E-mail Sam.Monroe@lamarpa.edu

RECEIVED JUL 12 2010

**OPERATION DOWNTOWN
Site Improvement Grant Program
Application**

APPLICANT INFORMATION

Is the applicant a: Corporation Partnership Proprietorship Individual

Name of Applicant: d/b/a

Lamar State College-Port Arthur

Mailing Address:

P.O. Box 310, Port Arthur, Texas 77641

Contact Name: Sam Monroe

Title: President

Telephone: Work Home 409-984-6100

Email: Sam.Monroe@lamarpa.edu

Type of Business: Education and Training

PROPERTY INFORMATION

The Port Arthur Downtown Revitalization Target Area: See attached map

Street address of property to be improved: 1400 Procter

Legal Description: Lot Block Tax Account No Lots 11 & 12, Blk 154, City of Pt. Arthur

Does the applicant own or lease the property. Own

If leasing, please include copy of lease agreement and letter of approval from owner.

Is the property currently: occupied X vacant If vacant, when will property be occupied (date)

What is the current and proposed use of the property?

Education and training purposes

How many full time employees, if any, does the business currently employ?

178

Do you anticipate hiring additional employees after the proposed improvements are complete? Yes No X

If so, how many more?

PROJECT INFORMATION

Description of Site Improvements and related improvements including improvements to facade:

The Learning Center project is the construction of a 7,500 sq.ft. building in the 1400 block of Procter on the existing campus. The building will include classrooms, testing and study areas, and faculty offices. The project was designed by The LaBiche Architectural Group and was approved by the Board of Regents of the Texas State University System at their meeting on Friday, February 19, 2010.

Estimated total cost of project: \$ 2,191,279.00 (Attach Project Budget form)

Grant funds are available from \$50,000 to \$250,000 per eligible property.

When does the project need to begin? 8-1-2010 Estimated time to complete (Date)

job? 12 months
(# of days)

NOTE: Work must not start prior to contract execution.

Attach:

1. Recent photos of the property (**required**)
2. Budget and supporting estimates (**required**)
3. Copy of lease and/or letter from property owner granting approval (if applicable)
4. Drawings or renderings that convey concept (if available)
5. Paint chips, color board or other samples (if available)

I certify that work has not started nor have I entered into any contract with any contractor for work to be covered under this grant application. I also understand that I will have to sign an agreement with the City of Port Arthur Economic Development Corporation to be approved by the City of Port Arthur regarding this grant award; a maintenance covenant will be filed to insure that the improvements will be maintained.

Applicant signature *Sam Monroe* Date 6-30-10

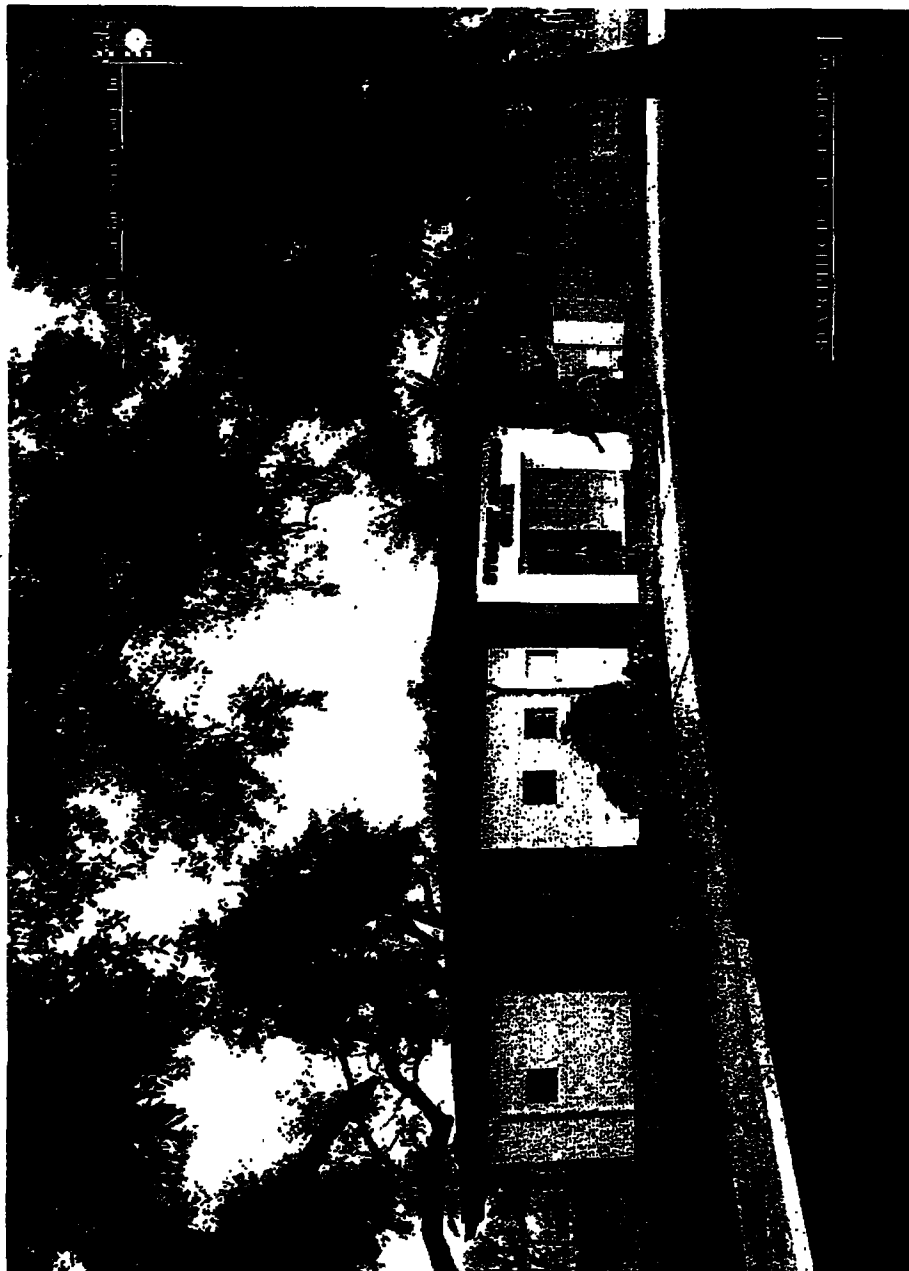
Applicant printed name Sam Monroe

Building Project Budget

Estimated Construction Cost	\$ 1,787,747.00
Alternate Proposals	\$ 94,838.00
Construction Contingency & Escalation	\$ 44,694.00
 Sub Total: Fized Limit Construction	 \$ 1,927,279.00
Architect/Engineer	\$ 164,000.00
Furnishings and Equipment	\$ 100,000.00
Estimated Total Project	\$ 2,191,279.00

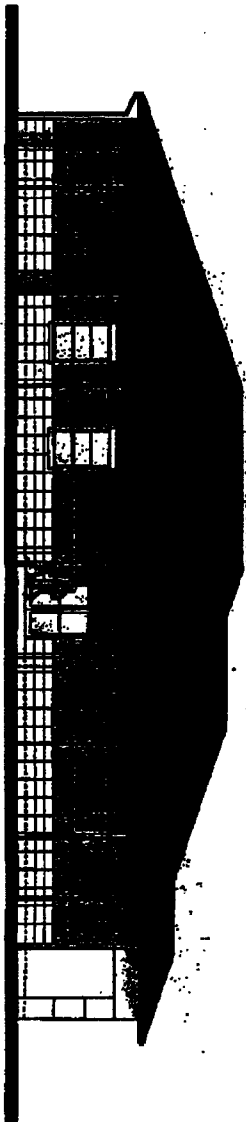
Utility, Lighting, and Landscape Project Budget

Utility Burial/Re-route	\$ 120,000.00
Telephone Lines Burial/Re-route	\$ 11,132.00
Cable Burial/Re-route	\$ 24,882.00
Street Lighting/Landscaping	\$ 93,986.00
Estimated Total Project	\$ 250,000.00



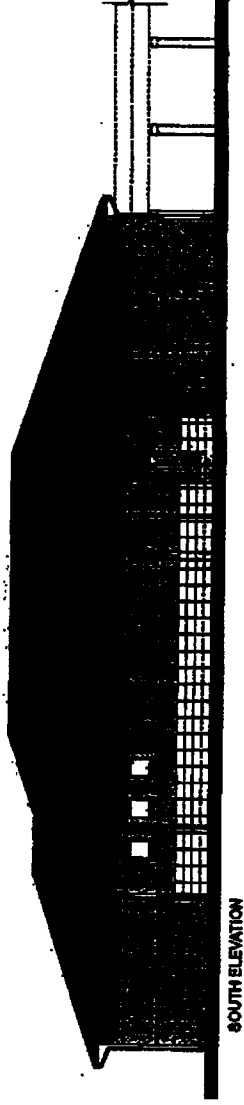


NORTH ELEVATION

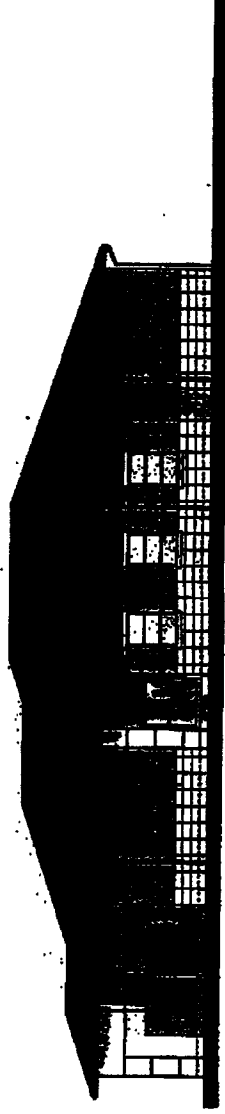


EAST ELEVATION

EXTERIOR ELEVATIONS



SOUTH ELEVATION



WEST ELEVATION

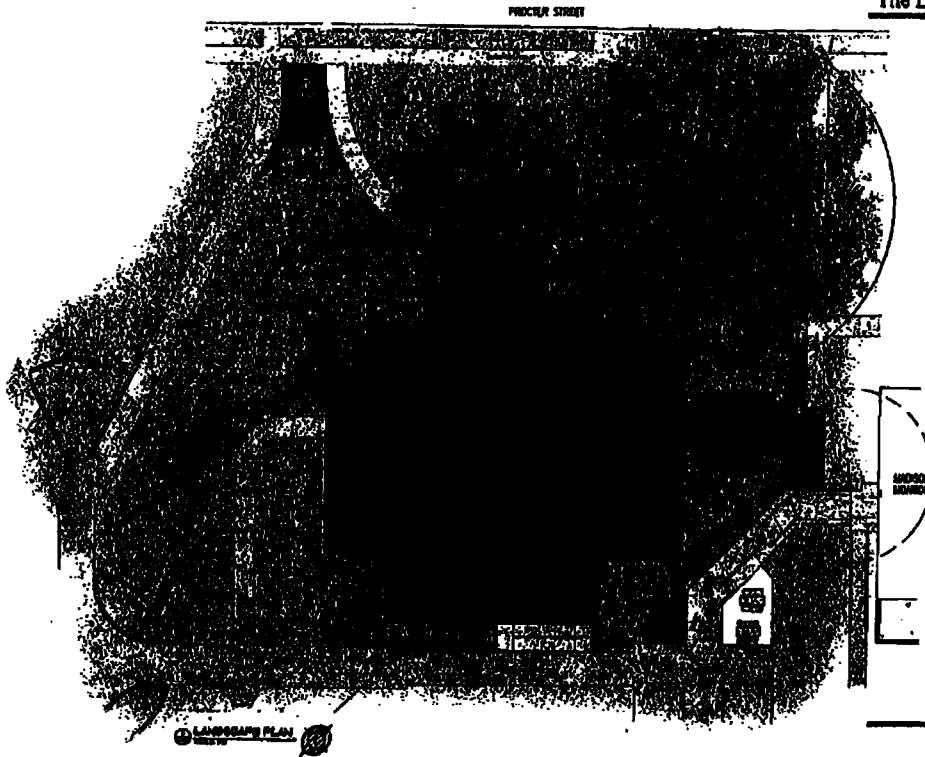


EXHIBIT "B"

OPERATION DOWNTOWN

A Downtown Improvement Program of the City of Port Arthur Economic Development Corporation for Site Improvements and Related Improvements necessary to promote or develop new or expanded business enterprises

A key element of a revitalization effort is the return of activity to a business corridor. These first few steps can be the spark to ignite interest and spur new business excitement. Operation Downtown provides a catalyst for these first steps. New site improvements and related improvements such as fresh paint, new awnings or complete façade rehabilitation all signal that something positive is happening. Operation Downtown is a conditional grant program available for site improvements and related improvements to business buildings located in Port Arthur Downtown Revitalization target areas (see attached map for target area boundaries). Projects will be granted up to \$250,000 to be matched by private or other source funds. For every three dollars of investment by private source funds into an Operation Downtown project Port Arthur Economic Development Corporation (PAEDC) will invest one dollar, not to exceed \$250,000 of public dollar investment.

The purpose of Operation Downtown is to promote or develop new or expanded business enterprises in the designated downtown area as per the proposition approved by the voters in the May 2009 Special Election for site improvements and related improvements necessary to promote or develop new or expanded business enterprises which will also do the following:

- Reverse the deterioration of business structures in the targeted areas.
- Enhance efforts to market vacant space and attract new businesses.
- Stimulate new, private investment and economic growth.
- Promote consistency in design and create a fresh and aesthetically pleasing environment.
- Assist property owners with the appropriate exterior rehabilitation of their buildings and bring them up to code.
- Reduce the perception of crime.
- Invest in historic preservation and rehabilitation.

This package contains other documents detailing the application process and information to assist you in completing the application. The package includes:

- This cover letter
- Basic Procedures and list of eligible projects
- Blank Application
- Map

For more information, contact:
Port Arthur Downtown Revitalization Program
4173 39th Street
Port Arthur, TX 77642
409-963-0579

ELIGIBLE PROJECTS

Project Description

A conditional loan forgivable over five years may be provided to owners of eligible properties to undertake site improvements and related improvements which can include comprehensive exterior repair and façade upgrades or renovations, and infrastructure improvements including sidewalk repairs and landscaping in and adjacent to the public right-of-way. Conditional loan will be forgiven over a three year period at a rate of one third per year that the property is occupied, upon approval by the Board of Directors of PAEDC. The conditional loan assistance is provided to the property owner on a reimbursement basis as the renovation project progresses. All conditional loans shall be secured by private sector matching investment of three to one dollar from the property owner or a financial institution. The conditional loan shall be secured by a mortgage on the improved real estate.

Eligible Properties

Applications may be submitted for business properties, either owner or tenant occupied within the Port Arthur Downtown Revitalization target areas. Owners of vacant buildings are encouraged to apply and improve property as a catalyst for future occupancy. Mixed use buildings with retail/commercial in the storefront are also encouraged.

Non Eligible Properties

Properties used primarily as residences are not eligible for Operation Downtown.

Eligible Applicants

Business property and business owners located in eligible areas may apply for assistance. Tenants must have a signed lease and the property owner's approval. The City Council of the City of Port Arthur may also apply for assistance.

Exceptions

The Port Arthur City Council and the PAEDC Board of Directors are each allowed a one time grant with no match up to \$250,000 to be used within the three year period of the Program dependent on availability of funds.

Eligible Improvements

Operation Downtown will fund site improvement and related improvement projects. All improvements must be permanent or fixed. Eligible improvements may include, but are not limited to:

- complete facade and site rehabilitation;
- replacement of broken window panes, aluminum or wood windows and broken store front glass;
- scraping, priming, and painting of window frames, cornice and store front;
- painting of brick facade and sites where brick has been previously painted;
- repair or replace deteriorating signage and brackets when attached to the building;
- repair or replace missing or broken tile;
- repair or replace worn awnings or canopies;
- removal of metal slipcovers to expose original materials;
- certain types of security elements or security recommendations;
- rehabilitation of the upper facade and site and display areas or side walls of a building may also be eligible if street level improvements are approved;
- roof repair when incidental to overall facade and site improvements.
- Restore old historical facades
- Other site improvements as authorized by the proposition approved by the voters in the May 2009 Special Election

Other minor repairs when incidental to overall facade improvements such as:

- ✓ exterior lighting;
- ✓ certain types of security elements or security recommendations;
- ✓ roof repair;
- ✓ repair of sidewalk, ADA accessibility;
- ✓ detached signage;
- ✓ new construction;
- ✓ parking lots;
- ✓ landscaping;
- ✓ other improvements as approved by the EDC

In addition, professional, architectural, and City permit fees may be included in the total improvement costs.

Ineligible Improvements

The following improvements are not eligible for funding:

- burglar bars;
- fencing;

BASIC PROCEDURE

Step 1 - Applicant Eligibility

- Business or property owners are eligible to apply for Operation Downtown funds if the business is 1 - located within a Port Arthur Downtown Revitalization target area; and 2 - utilized primarily for business purpose (this does NOT include residences or apartments).
- For information for Port Arthur Downtown Revitalization target area boundaries see map included herein or contact the Operation Downtown Coordinator or Port Arthur Downtown Revitalization Coordinator or the EDC CEO.
- If needed, a meeting at the site with the applicant, their contractor and Port Arthur Downtown Revitalization staff can be arranged to discuss the application process, area design guidelines and/or to develop a preliminary design concept.

Step 2 - Complete The Application

- The application (enclosed herein) is to be completed by the applicant (business owner, property owner or tenant). A completed application must contain information for all three parts: applicant information, property information and project information. Incomplete applications may result in delays in processing.
- Design assistance or preliminary project discussion meetings may be arranged if the applicant is uncertain what improvements are needed or would like suggestion. Inquires may be made to the Operation Downtown Coordinator at 409-963-0579.
- A completed application should be submitted to:
Port Arthur Downtown Revitalization Program
Port Arthur Economic Development Corporation
ATTN: Floyd Batiste, CEO
4173 39th Street, Port Arthur, TX 77642
- Once an application is received, the Operation Downtown Coordinator will confirm eligibility of the site and the proposed scope of work, notify the applicant that the application has been received and is under review, and arrange a Project Review meeting.

- Projects that are eligible for funding will be considered on a first come, first served basis. There is no deadline; applications are accepted year round. However, projects may be limited due to budget constraints and funding availability. All approved projects must be completed within 18 months of contract date.

Step 3 - Project Review & Contract Execution

- A Project Review meeting is required to be conducted prior to contract execution and construction beginning.
- A Design Review Team (Sub committee from PAEDC Board) will conduct the Project Review meeting with the applicant to review the application. A site visit may also be helpful but is not required.
- The Design Review Team will discuss the merits of the project and form a **recommendation** to either fund the project, or require the applicant to make changes and re-submit.
- The Design Review Team recommendation is presented to the PAEDC Board of Directors.
- If the recommendation is accepted by the EDC Board of Directors, the Design Review Team recommendation will be presented to the applicant to accept or withdraw.
- If approved, a Grant Agreement (contract) will be prepared by the EDC and affiliated attorneys or by the City Attorney and then forwarded to the EDC Board of Directors and to the City Council for approval
- The applicant and the EDC will sign the Grant Agreement. A fully executed Grant Agreement will be returned to the applicant. An Affirmative Covenant of Maintenance document is also signed and filed with the County Clerk's Office. **Start of the construction prior to the date of contract signing will void the grant.**

Step 4 – Construction

- A Pre-Construction Meeting will be held to go over construction scope of work, change orders, as well as other procedures. This meeting will usually be held on site, prior to construction but after the contract is signed. It is helpful if the applicants as well as contractors are present.
- If the improvements require a building permit, or approval from the Texas Historic Design and Review Commission, the applicant must comply. The City of Port Arthur Planning staff may be able to assist in the process on the applicant's behalf.
- A Sub committee from Board or City staff may monitor the progress and make periodic inspections during the project.

Step 5 – Reimbursement

- Funds will be provided on a reimbursement basis ONLY.
- Reimbursement will be processed at 90% rate with 10% retained until completion of the work.

- Applicant will contact the PAEDC or City staff to conduct a final inspection. If all parties are satisfied with the work, the PAEDC and applicant will sign off on completion of the Improvement.
- The applicant will complete the Project Completion form and submit it along with copies of invoices, canceled checks, asking for final reimbursement of applicable costs.
- When **all** work and documentation is received, the PAEDC staff will request payment. A final check will be sent to the applicant.

Downtown Revitalization Target Area Map



The boundaries of the Downtown Revitalization Target area are Lakeshore Drive to the south, Houston Avenue to the west, 9th Street to the north and Lake Charles Avenue to the East. Properties on both sides of the right-of-way of the boundary roads will be considered for Operation Downtown funding.

OPERATION DOWNTOWN
Site Improvement Grant Program
Application

APPLICANT INFORMATION

Is the applicant a: Corporation Partnership Proprietorship Individual

Name of Applicant: d/b/a _____

Mailing Address: _____

Contact Name: _____ Title: _____

Telephone: Work Home _____ Email: _____

Type of Business: _____

PROPERTY INFORMATION

The Port Arthur Downtown Revitalization Target Area: _____

Street address of property to be Improved: _____

Legal Description: Lot Block Tax Account No _____

Does the applicant own or lease the property. _____

If leasing, please include copy of lease agreement and letter of approval from owner.

Is the property currently: occupied _____ vacant ____ If vacant, when will property be occupied (date) _____

What is the current and proposed use of the property? _____

How many **full time** employees, if any, does the business currently employ? _____

Do you anticipate hiring additional employees after the proposed improvements are complete? Yes _____ No _____

If so, how many more? _____

PROJECT INFORMATION

Description of Site Improvements and related improvements including improvements to facade: _____

Estimated total cost of project: \$ _____ (Attach Project Budget form)

Grant funds are available up to **\$250,000** per eligible property.

When does the project need to begin? _____ Estimated time to complete
(Date)

job? _____
(# of days)

NOTE: Work must not start prior to contract execution.

Attach:

1. Recent photos of the property **(required)**
2. Budget and supporting estimates **(required)**
3. Copy of lease and/or letter from property owner granting approval or copy of warranty deed (if applicable)
4. Proof of funds for 75% of the total cost of the project **(required)**
5. Drawings or renderings that convey concept (if available)
6. Paint chips, color board or other samples (if available)

I certify that work has not started nor have I entered into any contract with any contractor for work to be covered under this grant application. I also understand that I will have to sign an agreement with the City of Port Arthur Economic Development Corporation to be approved by the City of Port Arthur regarding this grant award; a maintenance covenant will be filed to insure that the improvements will be maintained.

Applicant signature _____ Date _____

Applicant printed name _____

EXHIBIT "C"



File

THE TEXAS STATE UNIVERSITY SYSTEM

Founded 1911

Thomas J. Rusk Building • 200 East 10th Street, Suite 600 • Austin, Texas 78701-2407
(512) 463-1808 • Fax (512) 463-1816 • www.tsus.edu

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San Marcos

Texas State University-RRHEC
Round Rock

Lamar Institute of Technology
Beaumont

Lamar State College-Orange
Orange

Lamar State College-Port Arthur
Port Arthur

Sent Via UPS Overnight

August 19, 2010

Mr. James Shell, President
SeTex Construction Corporation
P.O. Box 20678
Beaumont, TX 77720

Re: Contract Between Owner and General Contractor
Project: The New Learning Center
Location: Lamar State College-Port Arthur

Dear Mr. Shell:

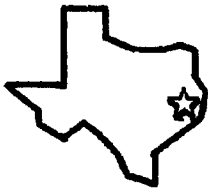
Please find enclosed one (1) fully-executed copy of the Contract Between Owner and General Contractor for your files.

Sincerely,


Donna G. Givens

/dg

cc: Mr. Stephen Arnold, Lamar State College - Port Arthur



**SeTEX
CONSTRUCTION
CORP.**

Commercial
Municipal

August 10, 2010

Ms. Donna Givens
Assistant to Vice Chancellor for Contract Administration
The Texas State University System
Thomas J. Rusk Building
2000 East 10th Street, Suite 600
Austin, TX 78701-2407

Project: *New Learning Center -- Lamar State College Port Arthur
Project No. 09016*

Subject: *"Notice to Proceed and Contract Documents"*

Dear Donna:

In respect to the above referenced project find the below listed and attached documents.

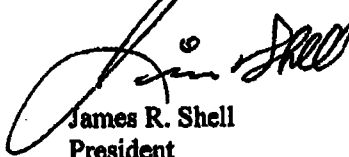
Enclosures:

1. One (1) fully executed "Notice to Proceed" dated August 6, 2010.
2. Three (3) signed originals of "Contract Between Owner and Contractor".

Please return one (1) fully executed copy of Contract back to our office for our files.

We trust the above meets with your approval and we look forward to a successful project.

Yours very truly,
SeTEX Construction Corp.



James R. Shell
President

sld

cc: Job/ File
Steve Arnold / LSCPA
Greg Wall / LaBiche

21001- Notice to Proceed

CONTRACT
BETWEEN OWNER AND CONTRACTOR

This Contract is made as of July 30, 2010 (the "Effective Date"), by and between:

The Owner: The Board of Regents of the Texas State University System
c/o Peter E. Graves, Vice Chancellor for Contract Administration
Texas State University System
Thomas J. Rusk Building, Suite 600
200 East 10th Street
Austin, TX 78701-2407
512-463-1808

and Contractor: SeTEX Construction Corp.
P. O. Box 20678
Beaumont, Texas 77720-0678
(409) 842-8181

for the Project: The New Learning Center
Lamar State College – Port Arthur

Project Architect/Engineer (A/E): The LaBiche Architectural Group, Inc.
7999 Gladys, Suite 101
Beaumont, Texas 77706

ARTICLE 1 CONTRACT DOCUMENTS

1.1 The Contract Documents consist of:

- a. This Contract and all exhibits and attachments listed, contained or referenced in this Contract;
- b. The referenced 2005 version of the Uniform General Conditions for Construction Contracts as published by the Texas Building and Procurement Commission ("Uniform General Conditions" or "UGC");
- c. Owner's Division 1 Specifications;
- d. The Drawings, Specifications, details and other documents developed by Architect/Engineer (A/E) and issued for construction with the Owner's approval;
- e. The Drawings and Specifications developed and issued for construction with the Owner's approval by Owner's other consultants, if any;
- f. All Addenda issued prior to the Effective Date of this Contract;
- g. All other Change Orders issued after the Effective Date of this Contract; and

h. The HUB Subcontracting plan submitted by the Contractor in response to the Request for Proposals issued by the Owner for this Project.

- 1.2 The term "Construction Manager (CM)" is interchangeable with the terms "Contractor" and "General Contractor" or other similar terms used in the various parts of these Contract Documents.

ARTICLE 2 SCOPE OF WORK

- 2.1 The Contractor shall furnish all of the materials and perform all of the work shown on the drawings and described in the specifications for the project and the Uniform General Conditions for Construction Contracts entitled The New Learning Center. These drawings and specifications are prepared for the Texas State University System by The LaBiche Architectural Group, Inc. acting as the Architect/Engineer. The Contractor shall do everything required by this Contract (UGC), the Addenda, Owner's Division 1 Specifications, the Technical Specifications, the Drawings, any Change Orders issued for this Contract and the Historically Underutilized Business (HUB) Subcontracting Plan submitted by the Contractor and approved by the Owner.
- 2.2 **ALTERNATES:** The Alternate Proposal "Add Copper Roof for \$150,000," fully described in the Specifications, is included as a part of this Contract.

ARTICLE 3 TIME OF COMPLETION

The Owner shall provide a Notice to Proceed in which a date for commencement of the Work shall be stated. The Contractor shall achieve Substantial Completion (UGC Article 12) of the Work within Three Hundred Eight (308) calendar days after such Commencement Date. The time set forth for completion of the work is an essential element of the Contract.

ARTICLE 4 THE CONTRACT SUM

The Owner shall pay the Contractor for performance of the Contract the sum of: One Million Nine Hundred Thousand (\$1,900,000), and make payments as provided in UGC Article 10 and the Division 1 Specifications.

A 5% retainage fee is established through this Contract between the Contractor and the Owner and a subsequent maximum 5% retainage fee shall be established between the Contractor and any subcontractor(s) who performs work or provides materials for this Project.

ARTICLE 5 LIQUIDATED DAMAGES

Time needed for completion is an important factor in this Contract. The Contractor agrees to perform its services under this Contract in an expeditious and economical manner consistent with good business practices and the interests of Owner. For each consecutive calendar day after the Substantial Completion date, computed using the Commencement Date and the Time for Substantial Completion described in Article 3, that any of the Work is not completed the amount of: Three Hundred Dollars (\$300.00) will be deducted from any money due the Contractor. Any sum so deducted will not be as a penalty but will be as

Liquidated Damages that the parties have agreed to be a reasonable estimate of actual Owner damages due to late completion.

ARTICLE 6 HUB SUBCONTRACTING PLAN

The Owner has adopted Exhibit H, Policy on Utilization of Historically Underutilized Business ("Policy"), which is incorporated herein by reference. Contractor, as a provision of the Contract must comply with the requirements of the Policy and adhere to the HUB Subcontracting Plan submitted with Contractor's Proposal. No changes to the HUB Subcontracting Plan can be made by the Contractor without the prior written approval of the Owner in accordance with the Policy.

ARTICLE 7 SAFETY

- 7.1 In accordance with UGCs and the Division 1 Specifications, Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The safety program shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable federal, state and local laws and regulations and with the requirements of Owner's project safety specification.
- 7.2 Contractor shall provide recommendations and information to Owner regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Contractor shall verify that appropriate safety precautions and provisions have been included in the Construction Documents.
- 7.3 The existence or creation of any Owner controlled insurance program in connection with the Work shall not lessen or reduce the Contractor's safety responsibilities.

ARTICLE 8 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK

- 8.1 The Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.
- 8.2 The Contractor shall insure that Texas Department of Health licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.
- 8.3 The Contractor shall take whatever measures he deems necessary to insure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns, comply with this requirement.
- 8.4 All materials used on this Project shall be certified as not Asbestos Containing Building Materials (ACBM). The Contractor shall insure compliance with the following acts from all of his subcontractors and assigns:

8.4.1 Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));

- 8.4.2 National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, National Emission Standard for Asbestos;
- 8.4.3 Texas Asbestos Health Protection Rules (TAHRP—Tex. Admin. Code Title 25, Part 1, Ch. 295C, Asbestos Health Protection
- 8.5 The Contractor shall provide at Substantial Completion, a notarized affidavit to the Owner stating that no asbestos containing materials or work was provided, installed, furnished or added to the Project.
- 8.6 The Contractor shall provide, in hard copy and electronic form, all necessary material safety data sheets (MSDS) of all products used in the construction of the Project to the Texas Department of Health licensed inspector.
- 8.7 At Final Completion the Contractor shall provide a notarized certification statement per TAC Title 25 Part 1, Chapter 295.34, paragraph c.1 that no ACM was used during construction of the Project. Prior to issuing this certification, the Contractor shall cause every subcontractor to provide a notarized statement that no ACM has been used, provided, or left on this Project.

ARTICLE 9 PRE-EXISTING CONDITIONS

The Contractor acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project site prior to signing this contract and that it has thoroughly investigated those conditions. Contractor shall not make or be entitled to any claim for any adjustment to the Contract Sum or the Contract Time for Completion arising from Project conditions that Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's investigation.

ARTICLE 10 BONDS AND INSURANCE

- 10.1 The Contractor shall provide performance and payment bonds on forms prescribed by Owner and in accordance with the requirements set forth in the UGCs (Article 5). The penal sum of the payment and performance bonds shall be equal to the Contract Sum.
- 10.2 The Contractor shall not commence work under the Contract until it has obtained all required insurance and until evidence of the required insurance has been reviewed and approved by the Owner's Designated Representative (see UGC 3.1.2 and 013100, paragraph 2). Contractor shall provide evidence of the insurance coverage for: Workers' Compensation, Employer's Liability, Comprehensive General Liability, Builder's Risk and Comprehensive Automobile Liability in the amounts as set forth in the UGCs. All of this required coverage shall remain in full force and effect throughout the term of the Project and shall be increased as necessary for each separate bid package, phase, change order, or Stage of construction prior to the commencement of construction for that package, phase, or Stage. Owner's review of the evidence of insurance provided by the Contractor shall not relieve nor decrease the liability of the Contractor.
- 10.3 The Contractor shall not cause or allow any of its required insurance to lapse or be canceled during the term of the Contract or as otherwise required in the Contract. If the Contractor fails to

obtain, maintain or renew any insurance required by the Contract, the Owner may obtain insurance coverage directly and recover the cost of that insurance from the Contractor.

- 10.4 The Owner reserves the right to reevaluate the insurance requirements during the effective period of the Contract and to make reasonable adjustments to the insurance coverages and their limits when deemed necessary and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor. Such changes will be incorporated into this Contract by Change Order.
- 10.5 The Owner shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such policies. Damages caused by the Contractor and not covered by insurance shall be paid by the Contractor.

ARTICLE 11 SPECIAL WARRANTIES

- 11.1 Notwithstanding anything to the contrary contained in this Contract, Owner and Contractor agree and acknowledge that Owner is entering into this Contract in reliance on Contractor's represented expertise and ability to provide construction services. Contractor agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and procedures.
- 11.2 The Contractor represents, and agrees that it will perform its services in accordance with the usual and customary standards of Contractor's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project. Contractor agrees to bear the full cost of correcting Contractor's negligent or improper work and services, those of its subcontractors, and any harm caused by the negligent or improper work or services.
- 11.3 The Contractor's duties shall not be diminished by any approval by Owner nor shall the Contractor be released from any liability by any approval by Owner, it being understood that the Owner is ultimately relying upon the Contractor's skill and knowledge in performing the services required hereunder.
- 11.4 The Contractor represents and agrees that all persons who are directly in charge of Contractor Work or Services that require registration or licenses under the laws, rules and regulations of any authority having jurisdiction over the Project are duly registered or licensed as required.
- 11.5 The Contractor agrees to advise Owner of anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Contractor under the provisions of this Contract that the Contractor considers unsuitable, improper, or inaccurate for the purposes intended.
- 11.6 Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Contract.

- 11.7 Contractor represents and agrees that the individual executing this Contract on behalf of Contractor has been duly authorized to act for and to bind Contractor to its terms.
- 11.8 Except for the obligation of Owner to pay Contractor certain fees, costs, and expenses pursuant to the terms of this Contract, Owner shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Contract. Notwithstanding any obligation or liability of Owner to Contractor, no present or future partner or affiliate of Owner or any agent, officer, director, employee, or regent of Owner, the Texas State University System, or of the component institutions comprising Texas State University System, or anyone claiming to be affiliated with Owner has or shall have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Contract.

ARTICLE 12 INDEMNITY

- 12.1 SEE ARTICLE 3 OF THE UNIFORM GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS FOR CONTRACTOR'S GENERAL INDEMNIFICATION OBLIGATIONS.
- 12.2 CONTRACTOR SHALL PROTECT AND INDEMNIFY THE OWNER FROM AND AGAINST ALL CLAIMS, DAMAGES, JUDGMENTS AND LOSSES ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT OR COPYRIGHT THAT ARISE OUT OF ANY OF THE WORK PERFORMED BY THE CONTRACTOR OR THE USE BY CONTRACTOR, OR BY OWNER AT THE DIRECTION OF CONTRACTOR, OF ANY ARTICLE OR MATERIAL. UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT OR COPYRIGHT INFRINGEMENT, OWNER SHALL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. CONTRACTOR DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF OWNER'S OR A/E'S DESIGN OF ARTICLES OR THEIR USE IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS. IN THE EVENT OF LITIGATION, OWNER AGREES TO COOPERATE REASONABLY WITH CONTRACTOR AND PARTIES SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.
- 12.3 The indemnities contained herein shall survive the termination of this Contract for any reason whatsoever.

ARTICLE 13 PARTY REPRESENTATIVES

- 13.1 The Owner's Designated Representative (see UGC 3.1.2 and 013100, paragraph 2) authorized to act in the Owner's behalf to change the scope, cost, completion time or to represent the Owner in any disputes of the Project is:

Peter E. Graves, Vice Chancellor for Contract Administration
Texas State University System
Thomas Rusk Building, Suite 600
200 East 10th Street
Austin, TX 78701-2407
512-463-1808
peter.graves@tsus.edu

- 13.2 The Owner's Designated Site Representative (see 013100, paragraph 2) authorized to act in the Owner's behalf with respect to all other aspects of the Project other than those listed in 13.1, and to approve single construction contract change order(s) less than \$25,000.00, is:

Mr. Steve Arnold
Director of Physical Plant
Lamar State College-Port Arthur
1848 Procter Street
Port Arthur, Texas 77641
Phone: (409) 984-6250
stephen.arnold@lamarpa.edu

- 13.3 The Contractor's designated representative authorized to act on the Contractor's behalf and bind the Contractor with respect to the Project is:

James R. Shell
President
SeTEX Construction Corp.
1660 S. 23rd Street
Beaumont, Texas 77707
Phone: (409) 842-8181
setexcc@sbcglobal.net

- 13.4 The parties may make reasonable changes in their designated representatives upon advance written notice to the other party.

ARTICLE 14 NOTICES

Notices of claims or disputes or other legal notices required by this Contract shall be sent to the following persons at the indicated locations.

If to Owner: Peter E. Graves
Vice Chancellor for Contract Administration
Texas State University System
Thomas Rusk Building, Suite 600
200 East 10th Street
Austin, TX 78701-2407
Phone: (512) 463-1808
peter.graves@taus.edu

With Copies to: Mr. Steve Arnold
Director of Physical Plant
Lamar State College-Port Arthur
1848 Procter Street
Port Arthur, Texas 77641
Phone: (409) 984-6250
stephen.arnold@lamarpa.edu

If to Contractor: James R. Shell
President
SeTEX Construction Corp.
1660 S. 23rd Street
Beaumont, Texas 77707
Phone: (409) 842-8181
setexcc@sbcglobal.net

The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

ARTICLE 15 MISCELLANEOUS PROVISIONS

- 15.1 **Assignment.** This Contract is a personal service contract for the services of Contractor, and Contractor's interest in this Contract, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.
- 15.2 **Recordkeeping.** Records of expenses pertaining to Additional Services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by the Owner or the Owner's authorized representative on reasonable notice.
- 15.3 **Family Code Child Support Certification.** Pursuant to Section 231.006, Texas Family Code, Service Provider certifies that it is not ineligible to receive the award of or payments under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
- 15.4 **Eligibility Certification.** Pursuant to Section 2155.004, Texas Government Code, Service Provider certifies that the individual or business entity named in this Contract is not ineligible to receive the award of or payments under this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- 15.5 **Franchise Tax Certification.** A corporate or limited liability company Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.
- 15.6 **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Contract may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- 15.7 **Entire Contract; Modifications.** This Contract supersedes all prior contracts, written or oral, between Contractor and Owner and shall constitute the entire Contract and understanding between the parties with respect to the Project. This Contract and each of its provisions shall be

binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Contractor and Owner.

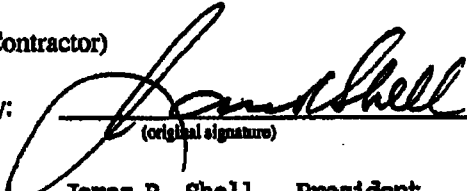
- 15.8 **Captions.** The captions of paragraphs in this Contract are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.
- 15.9 **Governing Law and Venue.** This Contract and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. The county where the Project is located shall be the sole place of venue for any legal action arising from or related to this Contract or the Project in which the Owner is a party. This supersedes any interpretation otherwise of UGC Section 2.3.
- 15.10 **Waivers.** No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Contract shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Contract shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Contract. Nothing in this Contract shall be construed to waive the constitutional, statutory, or common law rights or immunities of either party to this Contract.
- 15.11 **Binding Effect.** This Contract shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.
- 15.12 **Appointment.** Owner hereby expressly reserves the right from time to time to designate by notice to Contractor a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Contractor shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.
- 15.13 **Records.** Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for four (4) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Contractor in writing.
- 15.14 **Notices.** All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Contractor or Owner for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.
- 15.15 **Severability.** Should any term or provision of this Contract be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Contract shall be construed as if the invalid or unenforceable term or provision had never been included.
- 15.16 **Illegal Dumping.** The Contractor shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, *Texas Health and Safety Code*, Chapter 365.

15.17 Conflict of Interest. By signature hereon, Contractor certifies that no member of the Board of Regents of the Texas State University System, or Executive Officers, including component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.

BY SIGNING BELOW, the Parties have executed and bound themselves to this Contract as of the day and year first above written.

(Contractor)


By:


(original signature)
James R. Shell - President
(name and title typed)

Date: August 10, 2010

CONTENT APPROVED:

By:


(original signature)

Name: Peter E. Graves
Title: Vice Chancellor for
Contract Administration

FOR THE BOARD OF REGENTS
TEXAS STATE UNIVERSITY SYSTEM
(Owner)

By:


(original signature)

Name: Brian McCall
Title: Chancellor

Date: 8.10.10

EXHIBIT “D”



Lamar State College — Port Arthur
A Member of The Texas State University System

COPY

August 25, 2010

Mr. Guy N. Goodson
Germer Gertz, L.L.P.
550 Fannin, Suite 400
P.O. Box 4915
Beaumont, Texas 77704

Dear Guy:

The following is provided in support of the College's application for the 'Operation Downtown Site Improvement Grant Program'. As you know, the request is for a grant in the amount of \$250,000.

The Learning Center is to be built on campus in the 1400 block of Procter. The one story structure will contain 7,461 sq.ft. and will house:

- 2 classrooms
- 2 testing areas
- 1 study area
- 4 study carrells
- 4 faculty offices and conference room
- restrooms, storage, and mechanical space

The building is designed to accommodate 2,000 students a month seeking a variety of developmental education services. Also, please find enclosed:

- Construction schedule
- Notice to Proceed — construction services
- Construction Contract
- Letter certifying available funds

If you have questions or need additional information, please let me know.

Sincerely,

Sam Monroe
President

/ds
Enclosures

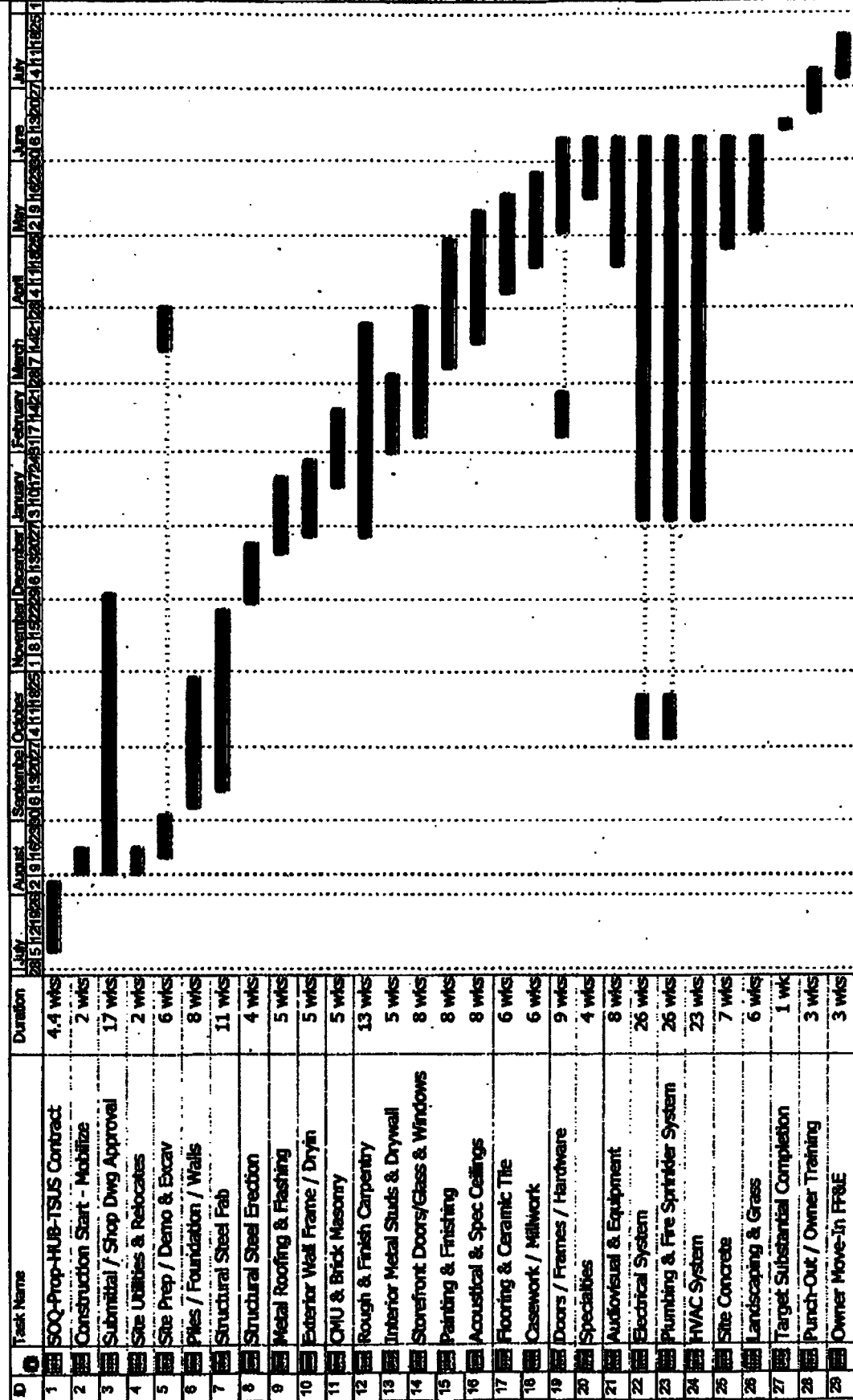
Office of the President
P.O. Box 310 • Port Arthur, Texas 77641-0310
Phone 409-984-6100 • 800-477-3872 • Fax 409-984-6032
E-mail Sam.Monroe@lamarpa.edu

EXHIBIT “E”

**New Learning Center Building
Lamar State College Port Arthur**

Preliminary Construction Schedule

**SeTEX Construction Corp.
July 8, 2010**



Task

Split

Progress

Revised:

07/06/10

Milestone

Summary

Project Summary

External Tasks

External MileTask

Split

EXHIBIT “F”



Lamar State College — Port Arthur
A Member of The Texas State University System

COPY

August 25, 2010

Mr. Floyd Batiste
Port Arthur Economic Development Corporation
P.O. Box 3934
Port Arthur, Texas 77642

Dear Mr. Batiste:

I am writing this letter to give you assurance that Lamar State College-Port Arthur has received the \$1,849,500 of Tuition Revenue Bond money for the Learning Center construction. The funds were deposited into our account on Friday, August 20, 2010.

Please let me know if additional information is needed.

Sincerely,

Gwen Reck, CPA
Vice President for Finance

/ds



THE TEXAS STATE UNIVERSITY SYSTEM

Founded 1911

Thomas J. Rusk Building • 200 East 10th Street, Suite 600 • Austin, Texas 78701-2407
(512) 463-1808 • Fax (512) 463-1816 • www.tsys.edu

REGENTS

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Bryan I College Station, Chairman

Charlie Anastro
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Kevin Lally
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Ron Mitchell
Horseshoe Bay

David Montagne
Beaumont

Trisha Pellard
Bellville

Michael Truncale
Beaumont

Deanna Williams
Arlington

Christopher Cove
San Marcos, Students Regent

CHANCELLOR

Brian McCall
Austin

SYSTEM MEMBERS

Lamar University
Beaumont

Sam Houston State University
Huntsville

Sam Houston State University
The Woodlands

Sul Ross State University
Albino

Sul Ross State University
Rio Grande College
Del Rio, Eagle Pass, Uvalde

Texas State University-San Marcos
San Marcos

Texas State University-IRREC
Round Rock

Lamar Institute of Technology
Beaumont

Lamar State College-Orange
Orange

Lamar State College-Port Arthur
Port Arthur

Sent Via Email & US Mail

August 6, 2010

Mr. James Shell, President
SeTex Construction Corporation
P.O. Box 20678
Beaumont, TX 77720

Re: Notice to Proceed - Construction Services
Project: The New Learning Center
Location: Lamar State College-Port Arthur

Dear Mr. Shell:

This is your Notice to Proceed (NTP) with the Project titled "The New Learning Center" on the campus of Lamar State College-Port Arthur.

The Competitive Sealed Proposal Contract between TSUS and SeTEX Construction Corporation (as attached) will govern all work under this NTP. This Contract is based on your successful proposal of \$1,750,000, which includes the Add Alternate for \$150,000 for the Copper Roof at \$150,000 for a total of \$1,900,000 (308 calendar days). The Completion Date established for this project is June 13, 2011. Liquidated Damages are set at \$300 per day.

The Owner has designated Peter E. Graves, Vice Chancellor for Contract Administration, Texas State University System, as the "Owner's Designated Representative (ODR)". The ODR is the only party authorized to direct changes to the scope, cost or time of the contract.

Stephen Arnold, Director of Physical Plant, Lamar State College-Port Arthur, has been designated the "Owner's Designated Site Representative (ODSR)." As such, he has the authority to make decisions on half of the Owner concerning coordination with the University of your work on the site including traffic controls, site safety, scheduling of utility outages, materials and color selections, and all matters within the contract that do not involve changes to the scope, cost and/or time for completion; however, single construction contract change orders less than \$25,000 may be authorized by the ODSR. He will coordinate and conduct quality inspections of the work as it is installed, authorize payments and conduct

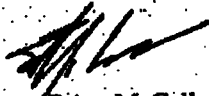
The New Learning Center-NTP
August 6, 2010
Page 2 of 2

final acceptance inspections. Please contact Mr. Arnold immediately and begin services under this NTP.

Please have an authorized officer of the company sign and return one copy of this NTP.

We look forward to a successful project.

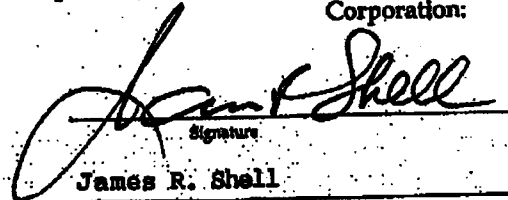
Sincerely,



Brian McCall
Chancellor

cc: Mr. Peter E. Graves, Texas State University System
Mr. Stephen Arnold, Lamar State College-Port Arthur

Accepted on behalf of SeTEX Construction
Corporation:



Signature

James R. Shell

Print or Type Name

President

Title

August 10, 2010

Date